



In the Matter of:

JAMES CARROLL PILLOW, JR.,

ARB CASE NO. 97-040

COMPLAINANT,

ALJ CASE NO. 87-ERA-35

v.

DATE: February 5, 1997

BECHTEL CONSTRUCTION, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER

This case, which arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1988),^{2/} is before the Board on motions of Complainant, James Carroll Pillow, Jr. (Pillow). In a Decision and Remand Order, the Secretary of Labor found that Respondent Bechtel Construction, Inc. (Bechtel) violated the ERA when it laid off Pillow. The Secretary remanded the case to an Administrative Law Judge for a determination of the back pay, damages, costs and attorney's fees to which Pillow was entitled.

On remand, Pillow and Bechtel agreed on the amount of back pay with interest and compensatory damages to be paid to Pillow and on the amount of attorney's fees and costs to be paid to his attorney. The settlement agreement recognized that Bechtel intended to seek judicial review on the issue of liability.

^{1/} On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions.

^{2/} The 1992 amendments to the ERA do not apply to this case, which was filed prior to 1992. See Sec. 2902(I) of the Comprehensive National Energy Policy Act of 1992, Pub. L. No. 102-86, 106 Stat. 2776.

The Secretary approved the settlement as to back pay with interest, compensatory damages, costs, and attorney's fees, stating: "I understand the agreement to be binding if Bechtel fails to seek judicial review on the issue of liability, or if it seeks such review and the court affirms the Secretary's finding that Bechtel violated the ERA." Aug. 16, 1994 Final Decision and Order at 2.

Bechtel sought judicial review. On September 19, 1996, the United States Court of Appeals for the Eleventh Circuit affirmed the Secretary's finding that Bechtel had violated the ERA. *Bechtel Construction Co. v. Secretary of Labor*, 98 F.3d 1351. The Eleventh Circuit's decision is final because Bechtel did not seek *certiorari* in the United States Supreme Court.

Pillow now seeks attorney's fees relating to the appeal in the Court of Appeals and interest payments, and asks for a period of 20 days from the date of the final appellate decision in which to file a memorandum of law in support of attorney's fees or to withdraw the motion in the event of a settlement on the fees issue.

Pillow also filed an emergency motion for partial payment of judgment, seeking prompt payment of the agreed amounts pending resolution of Pillow's entitlement to additional attorney's fees and interest.

Bechtel responded that it became obligated to pay the agreed amounts upon the issuance of the Court of Appeal's decision and that "[t]he only reason Bechtel has not yet paid the obligation is because Pillow has told us he would not accept anything less than \$365,000, else he would engage us in additional litigation." Bechtel stated that it is ready and willing to pay the agreed sums: \$25,000 in back pay and interest and \$25,000 in compensatory damages, for a total of \$50,000 paid to Pillow, and \$250,000 in attorney's fees and costs to Pillow's attorney.

There is no dispute that Bechtel owes \$50,000 to Pillow and \$250,000 to his attorney. We order Bechtel to pay those amounts immediately. Bechtel may not require Pillow or his attorney to attest that acceptance of such payment constitutes payment in full of all of Bechtel's obligations to them.

There is a dispute concerning the proper interpretation of the settlement agreement as to interest, and attorney's fees and costs accruing after the date of the agreement. We will render a decision on these issues after receiving submissions from the parties.

ORDER

1. Respondent immediately shall pay \$50,000 to Complainant and \$250,000 to Complainant's attorney, and shall not require Complainant or his attorney to attest that acceptance of such payment constitutes payment in full of all of Respondent's obligations to them.

2. Complainant shall have 30 days from the issuance of this Order to submit all documents showing the amount of attorney's fees, costs, and interest claimed together with a brief setting forth legal argument on the subject. Respondent shall have 50 days from the date of this Order to submit a response. Any documents and three copies of briefs shall be submitted to the Administrative Review Board, Room S-4309, 200 Constitution Ave., N.W., Washington, D.C. 20210.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member